

Appl. No. 10/811,527  
Atty. Docket No. 8768MD2  
Amdt. dated August 7, 2006  
Reply to Office Action of April 7, 2006  
Customer No. 27752

### REMARKS

#### Claim Status

Claims 1 - 27 are pending in the present application. No additional claims fee is believed to be due.

Claims 7 and 11 are canceled without prejudice while Claim 1 has been amended to incorporate the limitations of these canceled claims. Support for the amendments to Claim 1 are found in the claims as originally filed. Claims 8, 9, and 12-14 have also been amended to correct claim dependencies in view of the cancellations of claims 7 and 11.

Claim 10 has been amended to correct a typographical mistake regarding the dependency of the claim.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

#### Rejection Under 35 USC §102 Over Odorzynski

Claims 1, 5-15, 17, and 23-27 stand rejected under 35 USC. 102(b) as being anticipated by Odorzynski et al (U.S. Patent No. 6,245,050). With respect to the rejected claims, the Office asserts the following:

- Odorzynski teaches diaper 10 comprising backsheet 12, topsheet 14 and absorbent core 16.
- The elastomeric hot melt adhesive is applied to at least any one of the components of diaper 10, e.g. backsheet 12.
- The adhesive is applied via slot coating and therefore forms a continuous geometric pattern of rectilinear or curvilinear stripes on the diaper component substrate with a predetermined spacing between stripes.
- Since the backsheet 12 is a nonwoven thermoplastic film and the adhesive is a hot melt adhesive, the Office asserts that the adhesive is capable of being applied to the substrate in such a manner as to be partially penetrate said substrate.

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- Odorzynski teaches an elasticized area width of 1.27-7.62 mm and a thickness of 2.54 - 25.4 mm. (Col. 6, lines 52-58).
- Since Odorzynski teaches slot coating, the spacing between stripes can be predetermined so as to be nonuniform.
- Odorzynski teaches strands or ribbons of the adhesive film that are applied to define an elasticized area, therefore the strands must overlap to form boundaries and a continuous elasticized area within the boundaries. (Col. 6, lines 21-27).
- Odorzynski teaches waist elastics 38, leg cuffs 36 and fastening tabs 40 manufactured from the same adhesive film composition, therefore a component of diaper 10 having the elastic composition therein has an additional elastic material that is capable of being manufactured from an alternate suitable elastomeric adhesive.
- Odorzynski teaches applying the elastic adhesive composition to at least one component of diaper 20. (Col. 5, lines 49-51).
- Odorzynski teaches that backsheet 12 is comprised of a nonwoven polyethylene web. (Col. 2, lines 35-38).
- Odorzynski teaches that the component of the diaper containing the adhesive is necked. (Col. 6, lines 1-7).
- Odorzynski teaches the elastic adhesive in film form sandwiched between the topsheet and backsheet to form an elasticized area. (Col. 5, lines 63-67).

Applicant respectfully traverses these rejections.

Applicant submits that Odorzynski fails to teach or suggest each and every limitation of the claimed invention such that there is a failure to anticipate Applicant's invention. Odorzynski relates to a disposable absorbent article that includes at least one elasticized area formed from an elastomeric, hot melt, pressure-sensitive adhesive that is used to bond a first and second component to one another. The reference, however, does not teach or suggest an article with a single elastic component comprising a deposition of an elastomeric composition in a predetermined geometric pattern wherein the pattern comprises at least two differing individual elements selected from the group consisting or

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rectilinear stripes, curvilinear stripes, spirals, dots, geometric figures and combinations thereof. Rather, Odorzynski merely teaches application of the disclosed hot melt adhesive in "the form of a strand or ribbon." See, col. 6, lines 21-22. Although this applied strand or ribbon is taught by the patentee to be stretched or thinned, there is no teaching of at least two differing individual elements being applied to a component on the article as is required in the present application. For instance, there is no teaching or suggestion by Odorzynski of elastomeric members in perpendicular, parallel, and/or angled positions with respect to one another in a single component. As amended, the present claims require differing elements in an elastic component of the article. Since such is not taught or suggested by the reference, there can be no anticipation of the rejected claims by Odorzynski. Applicant therefore submits that the rejection of these claims is improper and it respectfully requests reconsideration and withdrawal of the rejection.

Rejection Under 35 USC §103(a)

Over Odorzynski or Odorzynsk in view of Himes

Claims 16 and 18-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski. The Office has raised the following points with respect to Odorzynski's disclosures and the present invention:

- With respect to Claim 16: Odorzynski teaches selecting the viscosity of the adhesives that can involve mixing adhesives as well as heating them. Odorzynski does not explicitly teach two different adhesives, however Odorzynski does teach applying the adhesives either by spray coating or film forming (Col. 6, lines 13-20) which would allow the application of different elastic adhesive compositions to one substrate. Examiner asserts therefore that it would be obvious to modify the adhesive area taught by Odorzynski so as to be comprised of two different adhesive compositions applied in two different patterns.
- With respect to Claims 18, 19, 20, & 22: Odorzynski does not explicitly teach different elastic adhesives disposed on different components of diaper 10. However, since Odorzynski teaches various application methods for the elastic adhesive composition, various suitable materials for the composition itself, and

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teaches applying an adhesive to at least one component of diaper 10 (e.g. fastening tabs 40 to topsheet 14), it would be obvious to one of ordinary skill in the art to apply different adhesives in different patterns to different components of diaper 10, said differing adhesives exhibiting different elastic properties.

- With respect to Claim 21: Fastening tabs 40 comprising an elastic adhesive form a right angle with topsheet 14 containing an elastic adhesive.

Applicant traverses the rejection of these claims as well. As detailed above, Odorzynski fails to teach or even suggest the requisite elements of the claimed invention. In particular, there is no teaching of at least two differing individual elements being applied to a singled elastic component on the article. Therefore, although Odorzynski teaches applying the adhesives either by spray coating or film forming, that would still not have led a skilled artisan to arrive at the present invention which requires at least two differing elements on an elastic component.

Claims 2-4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski in view of Himes (U.S. Patent No. 5,304,599). The Office states that "[w]ith respect to Claims 2-4: Odorzynski does not teach a percent set for the elastomeric adhesive. Himes teaches an extrudable elastomeric composition including an elastomeric polymer and a tackifying resin having a percent set of 9%. ('599, Table 4). Himes teaches that this composition is suitable for extrusion onto an elastic sheet, therefore it would be obvious to substitute the composition taught by Himes for the adhesive composition as taught by Odorzynski so as to have a backsheet with the adhesive composition therein having a percent set of 9%." Applicant traverses this rejection, too, for the same reasons detailed above. Himes does not remedy Odorzynski's shortcoming of a failed teaching of an article comprising an elastic component that comprises a deposition of an elastomeric composition in a predetermined geometric pattern wherein the pattern comprises at least two differing individual elements selected from the group consisting of rectilinear stripes, curvilinear stripes, spirals, dots, geometric figures and combinations thereof. Rather, Himes focuses on a particular extrudable elastomeric composition that comprises an elastomeric polymer and a tackifying resin where the composition if formed into an elastic sheet having a stress relaxation of less than about 30 percent. Himes also fails to teach or suggest depositing the elastomeric composition in a predetermined geometric

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pattern comprising at least two differing elements as required by Applicant's claims.

Therefore, even application of Himes fails to yield a combination that amounts to a semblance of the presently claimed invention.

It is well settled that the Office cannot pick and choose among individual elements of assorted prior art references to recreate the claimed invention based on the hindsight of the Applicants' invention. Rather, the Office has the burden to show some teaching or suggestion in the references to support their use in the particular claimed combination. *See, SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 8 USPQ2d 1468, 1475 (Fed. Cir. 1985). Furthermore, "obvious to try" is not a valid test of patentability. *In re Dow Chemical Co.*, 5 PQ2d 1529 (CAFC 1988); *In re Antonie*, 195 USPQ 6 (CCPA 1977). There must be a suggestion or teaching that the claimed novel form could or should be prepared. *In re Cofer*, 148 USPQ 268 (CCPA 1966). These suggestions and/or teachings are totally absent from the cited references.

#### Conclusion

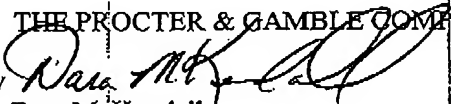
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under §§102 and 103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-6, 8-10, and 12-27 is respectfully requested.

Respectfully submitted,

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